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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/717,015

11/19/2003

Randall J. Huebner

ACM 367

6712

23581 7590 12/31/2007
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EXAMINER

RAMANA, ANURADHA

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

12/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/717,015	HUEBNER, RANDALL J.	
	Examiner	Art Unit	
	Anu Ramana	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-27,50 and 51 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-28,31-35,50 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 15, 2007 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 17-28 and 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 17, it is unclear how the fastener is moving along the transverse slot since the first and second fasteners are fixed relative to one another. It appears that the claim must be amended to state the bone plate is moved along a path permitted by relative travel of the bone plate about the second fastener.

In claim 28, line 18, the recitation, "along a path permitted by relative travel of the second fastener along the guide slot" renders the claim vague and indefinite since the plate is actually moving against the second fastener which has already been placed in bone according to earlier recitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-7, 9-15, 17-18 and 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Putnam et al. (US 5,586,985).

Putnam et al. disclose a method of fixation of distal radius fractures including the step of providing a bone plate 10 including a first opening 22 and a second opening 24 provided as a transverse or slot lying crosswise to a lateral axis of the head portion 14 of the plate to allow for more angulation as desired by a practitioner. Putnam et al. clearly disclose placement of a fastener in slot 24 followed by placement of a fastener in opening 22 wherein angulation of the plate can be adjusted by movement of the plate about a fastener placed in slot 24 (Fig. 1, col. 3, lines 63-67, cols. 4-7 and col. 8, lines 1-41).

The method steps of claims 1-2, 4-7, 9-15, 17-18 and 20-27 are inherently performed when the Putnam et al. device is used to fix distal radius fractures.

Claims 1-2, 4-7, 9-15, 17-18 and 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Orbay et al. (US 6,440,135).

Orbay et al. disclose a bone plate 102 having a transverse slot 228 and openings (224, 226, 229, 230, 232, 234 and 236) that is used to fix distal radius fractures (Figs. 2-9 and 12, col. 3, lines 46-67, col. 4, col. 5, lines 1-36, col. 7, lines 43-67 and col. 8, lines 1-3).

Orbay et al. disclose placement of screws through holes in the bone plate, adjustment of the fractured bones under the plate and tightening of the screws after adjustment of the fractured bones (col. 7, lines 43-65).

The claimed method steps are inherently performed during use of Orbay et al. device for fixation of fractures of the distal radius.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orbay et al. (US 6,440,135) in view of Michelson (US 6,383,186).

Orbay et al. disclose all elements of the claimed invention except for a plate holder that is used to move the plate.

Michelson teaches a plate holder that engages a bone plate to enable movement of the plate (Figs. 38 and 39A-D, col. 18, lines 49-67 and col. 19, lines 1-19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a plate holder as taught by Michelson to enable movement and adjustment of the plate in the method of the combination of Orbay et al. and Michelson.

The method steps of claims 8, 16 and 19 are rendered obvious by the above discussion.

Claims 8, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Putnam et al. (US 5,586,985) in view of Michelson (US 6,383,186).

Putnam et al. disclose all elements of the claimed invention except for a plate holder that is used to move the plate.

Michelson teaches a plate holder that engages a bone plate to enable movement of the plate (Figs. 38 and 39A-D, col. 18, lines 49-67 and col. 19, lines 1-19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a plate holder as taught by Michelson to enable movement and adjustment of the plate in the method of the combination of Putnam et al. and Michelson.

The method steps of claims 8, 16 and 19 are rendered obvious by the above discussion.

Response to Arguments

Applicant's arguments submitted under "REMARKS" in the response filed on October 15, 2007 have been fully considered.

Applicant's arguments with respect to the rejections of claims 17, 18 and 20-27 as being anticipated by Orbay et al. (US 6,440,135) are not persuasive for the following reason.

The limitation "transverse slot" only requires a slot that is lying crosswise to any one of several possible axes since the claim does not define an axis. Orbay et al. clearly show a slot that is transverse to a horizontal axis of the plate.

As stated in the previous action, it is the Examiner's position that prior to tightening of bone screws 104 in guide slot 228 and holes 224, 226 and 229 some amount of angular adjustment of bone plate 102 would be permitted. It is also noted that placement of screws in holes 224, 226 and 229 fixes the screws with respect to each other since the axis of entry of each screw through the plate is fixed.

Allowable Subject Matter

The indicated allowability of claims 28 and 31-35 is being withdrawn in view of the rejections under 35 USC 112 second paragraph made in this action. The Examiner apologizes for any inconvenience caused to the Applicant by this action.

Claims 28 and 31-35 would be allowable if the rejections under 35 USC 112 second paragraph are overcome.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

December 21, 2007


ANURADHA RAMANA
PRIMARY EXAMINER
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